THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT APPEAL Nos. 1819 & 2140 OF 2005

Date : 28-01-2006

Between:

Manaksia Limited, Bollaram, Medak District,

Rep. by its Director & others.

…..Appellants.

and

The Inspector, Legal Metrology, Weights & Measures Department, Dharmavaram, Anantapur District.

.....Respondents

For Appellants : MR.C.R.SRIDHARAN

For the Respondents : GP FOR CIVIL SUPPLIES

< Gist:

> Head Note:

? CITATIONS:

(2005) 1 SCC 122

C/15

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COMMON JUDGMENT : (Per Hon'ble Sri Bilal Nazki, J)

These two writ appeals are being heard together and are being disposed of by this common judgment, as they raise common questions of law and fact.

The learned Single Judge has passed two different orders in two different writ petitions on 29th of August, 2005. Writ appeal No.1819 of 2005 arise out of orders in writ petition No.18662 of 2005, whereas writ appeal No.2140 of 2005 arise out of orders in writ

petition No.18663 of 2005.

The facts of writ petition No.18663 of 2005 are as under –

On 16th of October 2000, a show cause notice was issued by the 2nd respondent to the petitioner, who was a manufacturer and retail dealer in consumer care hygiene products, to compound the offence under the Standards of Weights and Measures Act, 1976 (hereinafter referred to as 'the SWM Act'). Notice was replied to by the petitioner on 16th of November 2000. Respondent No.2 was not satisfied with the reply and he filed a complaint before the Judicial First Class Magistrate, Dharmavaram, and the Magistrate has taken cognizance of the said complaint and numbered it as STC No.21 of 2002. Thereafter, the petitioner filed an application before the Magistrate, alleging that the complaint did not disclose any offence and was also time-barred. This application was dismissed by the Magistrate on 18th of November 2003 and the trial is pending.

The case of the petitioner is that he deals with Mortein Power, which is a mosquito coil, used as repellant of mosquitoes. The coils are manufactured and marketed in accordance with the applicable laws, according to the petitioner. Ten mosquito coils are put in a transparent polythene cover along with a metal stand and a leaflet and the cover is heat-sealed. Each such polythene sealed cover is put inside a thick paper carton, which is one of the conditions imposed by CIB and on the said paper carton, the trade name, name and address of the manufacturer and marketer and all other details like batch number, date of manufacture, date of expiry, unit sale price, contents in number, etc., are printed. The respondents however, seized the articles and proceeded to prosecute petitioner on various grounds, including, *"declaration as to the name and address of the manufacturer, month and year of manufacture and the retail sale*

price have not been mentioned on the said packages". This, we have extracted from the notice issued on 17th of August 2004.

The learned counsel for petitioner wants this Court to appreciate that there are two covers over the coils, one is polythene cover, which does not contain these details, but the polythene cover is then put in another cover, which contain these details. Even the learned counsel for petitioner tried to show us in the open Court, the packing of the mosquito coils. These are matters, which will have to be decided by the competent authorities. In the earlier matter pertaining to the year 2000, the petitioners filed their reply and are facing prosecution. Even the learned Magistrate dismissed their application, claiming that no prima facie case was made out in the complaint. That order has not been even challenged. It is not possible for this Court to conduct an inquiry here, as to whether the petitioner has violated any of the provisions of the SWM Act or Rules made thereunder. Even the notice dated 17.8.2004, by which the petitioner had been asked to compound the offence, or face prosecution, has not been challenged in this writ petition. A novel prayer has been made, by which the petitioner wants this Court to declare that Mortein Power Mosquito Coil marketed by the petitioner, distributed and sold through its distributors, dealers, retailers in cardboard carton package as a whole, is 'pre-packed commodity' within the meaning of Section 2(1) of the Standards of Weights and Measures (Packaged Commodities) Rules, 1977. We are afraid, such a declaration cannot be given by this Court in a vacuum. The petitioner has not even challenged the notice issued to him. Therefore, we are of the view that the learned Single Judge has not committed any illegality, which needs to be corrected in this appeal. Whether the petitioner has committed an offence or not, is a matter that has to be decided by the trial Court, if the petitioner does not compound the offence in terms of the notice issued to him.

Learned counsel for appellant has referred to a judgment in the

case of **Zandu Pharmaceutical Works Ltd. v. Mohd.Sharaful Haque**, which relates to interpretation of Section 468(2) and 473 of Cr.P.C. But, the order passed by the learned Magistrate refusing to drop proceedings, is not under challenge before us. He has also relied on this judgment, which mainly deals with the law of quashing the complaints or F.I.Rs. But the appellant has not challenged even the notice, which asks him to either compound the offence or face the prosecution. He seeks a general declaration, which is not possible for this Court in the absence of the facts. In the judgment cited above (1 supra), the Supreme Court relied on various earlier judgments and the tests for quashing of proceedings or complaints or F.I.Rs., were laid down. None of the tests could be even applied to the present case, as there is no challenge to the notice.

The writ petition as well as the writ appeal are misconceived and are accordingly dismissed with costs.

Now, coming to the facts of the second writ petition being writ petition No.18662 of 2005, in this writ petition, the petitioners have challenged proceedings initiated by the respondent against petitioner Nos. 1 to 4 in STC. No.21 of 2002 before the Judicial First Class Magistrate, Dharmavaram, Anantapur District.

We have already given the background of STC.No.21 of 2002 hereinabove, while discussing writ petition No.18663 of 2005.

The prosecution has been initiated in the year 2002. Then, an application being Crl.M.P.No.378 of 2003 was made by the petitioner for dropping of proceedings. That was dismissed on 18th of November, 2003. This writ petition has been filed to challenge that order almost two years thereafter. The delay has not been at all explained in the writ petition and this writ petition can be dismissed on

the ground of latches alone. But on merits also, we have heard the learned counsel for the parties.

A complaint has been annexed with the petition. These facts from the complaint, are pertinent to note –

a. *Three packages of Mortein Power Coils net content 10 coils manufacturing date December, 1999 batch KH0015, manufactured by M/s.Kunsistoff Polymers Limited, Bolaram 24A and 25, Miyapur Industrial Area, Medak District, and declared on the ….*

b. *The packages containing the commodity does not contain the name and address of the manufacturer, identity of the commodity, month and year of manufacture, net contents and retail sale price of the commodity, as per rule 9(3).*

Rule 9(3) has also been reproduced in the complaint, as under;

> *"When a package is provided with an outside container or wrapper such container or wrapper shall also contain all the declaration which are required to appear on the package, except when such container or wrapper itself is transparent and the declarations of the package itself is easily readable through such outside container or wrapper."*

Even if what the petitioner submits is true and it is established during the trial that the coils are wrapped in a polythene bag and then they are put in a cardboard packet, even then, prima facie, there would be contravention of Rules. Rule 9(3) lays down that if the outer cover is not transparent, then, all those details mentioned under Rule 9(3) should be printed on both the covers. Therefore, in our view, the complaint itself discloses an offence and cannot be quashed. Since the complaint discloses prima facie an offence, the judgment cited

above (1 supra) cannot come to the rescue of the petitioners. These matters were considered by the learned Magistrate when an application was made before him and he has passed a well-reasoned order. In para 6 of his order, he stated –

> *"6. .....As per the contention of the accused, there is no necessity to have declaration on both inner container and outer container. The declaration is there on the outer container and it is sufficient compliance of the Rules. But the contention of the prosecution is that the declaration must be on the package and the Mortein Coils were packed and kept in the container that the wrapper in which the mortein coils are packed is not containing the necessary declaration. This aspect can be decided only after full trial and at this stage it cannot be decided without verifying the property and without adducing oral and documentary evidence. On that ground it is not proper to dismiss the suit without giving sufficient opportunity to the prosecution. Accordingly, this point is decided against the petitioners and in favour of Respondent-Complainant."*

For these reasons, we do not find merit in this writ appeal and writ petition, which are accordingly dismissed with costs.

In the result, Writ Appeal Nos.1819 and 2140 of 2005 as well as Writ Petition Nos.18662 and 18663 of 2005 are dismissed with costs.

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(BILAL NAZKI, J)

28-01-2006

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(R.SUBHASH REDDY, J)

N.B:-

L.R. copies to be marked.

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